



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,372	10/20/2003	Douglas Sean Morris	47869/265209	2852

826 7590 04/04/2007

ALSTON & BIRD LLP
BANK OF AMERICA PLAZA
101 SOUTH TRYON STREET, SUITE 4000
CHARLOTTE, NC 28280-4000

EXAMINER

HOGUE, GARY CHAPMAN

ART UNIT	PAPER NUMBER
----------	--------------

3611

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/04/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/689,372

Applicant(s)

MORRIS, DOUGLAS SEAN

Examiner

Gary C. Hoge

Art Unit

3611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,5-16,18,20-33,35,36,39 and 41-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 36,39 and 41-43 is/are allowed.
- 6) ☒ Claim(s) 1,3,5-16,18,20-33 and 35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. The indicated allowability of claim 34 is withdrawn in view of the newly discovered reference(s) to Fast (5,018,287). Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3, 6, 8-16, 18, 21, 23-25, 27-31, 33 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Fast (5,018,287).

Fast discloses a stackable storage container **10** comprising a bottom wall, a peripheral wall having inner and outer surfaces, the peripheral wall having a top end and a bottom end that adjoins the bottom wall, the peripheral wall and the bottom wall defining a storage area, and wherein the top end of the peripheral wall defines a flange portion (Fig. 4) that extends outwardly; and a display window **40** extending from the flange portion of the peripheral wall, the display window having a front wall **56** and first and second sidewalls (i.e., the edge portions of front wall **56**) spaced away from the outer surface of the peripheral wall to define a partially enclosed gap.

Regarding claims 8 and 23, note that the sides of the display window disclosed by Fast are open. Water would be able to drain through this gap.

Art Unit: 3611

Regarding claims 10 and 25, it has been held that the term “integral” is sufficiently broad to embrace constructions united by such means as fastening and welding. *In re Hotte*, 177 USPQ 326, 328 (CCPA 1973).

Regarding claims 11 and 29, the front wall of the display window and the peripheral wall define an angle of zero degrees therebetween.

Regarding claims 14 and 30, it is clear that Fast contemplates an unlimited number of display tokens, i.e., labels. As to what’s written on the labels, that is an obvious matter of choice in design.

Regarding claim 27, it has been held that matters relating to ornamentation only, and having no mechanical function, cannot be relied on where claims are not directed to design but are structural claims. *In re Seid*, 73 USPQ 431.

Regarding claim 31, the label disclosed by Fast can easily be sunk in water.

Regarding claim 33, the label card disclosed by Fast is “adapted to” support whatever indicia is desired.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 5, 20 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fast (5,018,287).

Art Unit: 3611

Regarding claims 5 and 20, Fast discloses the invention substantially as claimed, as set forth above. However, it is not known what material is contemplated for the fabrication of the container. Because it is within the level of ordinary skill of a worker in the art to select from among known materials on the basis of their suitability for the fabrication of a given device, and since a person having ordinary skill in the art would know that polyethylene or polycarbonate would be suitable for the fabrication of a container and a label, it would have been obvious to one having ordinary skill in the art at the time the invention was made to fabricate the container and label disclosed by Fast from polyethylene or polycarbonate as a matter of choice in design, based on such factors as cost and availability of the materials to the designer.

Regarding claim 26, it would have been obvious to make the label about 2 millimeters in thickness because it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

6. Claims 7 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fast (5,018,287) in view of Fast (WO 90/09017).

Fast ('287) discloses the invention substantially as claimed, as set forth above. However, the front wall of the display window does not have an opening. Fast ('017) teaches that it was known in the art to provide an opening 28 in the front wall of a display window. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the front wall of the display window disclosed by Fast ('287) with an opening, as taught by Fast ('017), in order to facilitate removal of the label from behind the display window.

Art Unit: 3611

7. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fast (5,018,287) in view of Kiggins (5,901,485).

Fast discloses the invention substantially as claimed, as set forth above. However, it is not known whether the label cards have indicia on both sides. Kiggins teaches that it was known in the art to provide a label card having indicia on both sides “for reversible use” (col. 3, lines 22-24). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the label card disclosed by Fast with indicia on both sides, as taught by Kiggins, to enable reversible use of the card.

Allowable Subject Matter

8. Claims 36-43 are allowed.

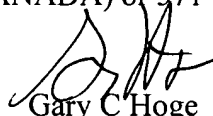
Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary C. Hoge whose telephone number is (571) 272-6645. The examiner can normally be reached on 5-4-9.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Lesley Morris can be reached on (571) 272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3611

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Gary C Hoge
Primary Examiner
Art Unit 3611

gch